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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [OSCE](#) [TU](#)
SUBJECT: TURKEY'S PLANS TO AMEND CONTROVERSIAL "ARTICLE
301" HUNG UP FOR NOW WITHIN AKP

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Classified By: Political Counselor Janice Weiner for reasons 1.4(b),(d)

11. (C) Summary: Divisions in Turkey's ruling Justice and Development Party (AKP) have delayed plans by at least a week to introduce amendments to controversial Turkish Penal Code Article 301 (criminalizing insulting "Turkishness"). Four main amendments are under discussion: changing "insulting Turkishness" to "degrading the Turkish nation"; lowering the maximum penalty from three to two years in prison; eliminating the provision that increases punishment if the crime is committed abroad; and creating a mechanism to screen out baseless cases. A January 7 cabinet meeting and subsequent AKP Central Executive Board (CEB) meeting failed to resolve an impasse centered on "Turkishness" and the screening mechanism; PM Erdogan reportedly rolled the issue over to the next, as-yet-unscheduled CEB meeting. Journalists previously prosecuted under Article 301 see the proposed changes as cosmetic; the European Commission views them as an important symbolic step. PM Erdogan appears to be trying to satisfy the law's critics without alienating nationalist voters, including within his own party. End summary.

AKP Still Debating Article 301

12. (SBU) Justice Minister Mehmet Ali Sahin told the press January 7 an amended version of Article 301 could reach the floor of parliament within a week. The four main amendments would be:

--changing "insulting Turkishness" to "degrading the Turkish nation";

--reducing the maximum penalty from three to two years imprisonment;

--eliminating the provision that increases punishment if the crime is committed abroad; and

--appointing an individual or committee to screen out baseless cases.

Sahin's timeline slipped after AKP leaders were unable to agree on key changes at a January 7 cabinet meeting and an AKP CEB meeting.

13. (SBU) AKP leaders are mainly divided over whether to delete "Turkishness" and the details of the screening mechanism. In one camp, Sahin wants to delete "Turkishness" and invest the minister of justice with screening authority. Leading the other camp, DPM Cemil Cicek (former justice minister and force behind the existing version) favors retaining "Turkishness" and establishing a screening committee of representatives from several government offices.

AKP reportedly will revisit the issue at the next, as-yet-unscheduled Central Executive Board. Parliamentary Justice Committee Chair Ahmet Iyimaya told us the intensive demands for AKP to amend the law have translated into political will that makes amendment of some kind almost inevitable. It may simply take additional time, he commented. PM Erdogan said publicly that the final assessments on Article 301 are in train.

Opposition Parties' Own Views of Article 301

14. (U) Nationalist Action Party (MHP) leader Devlet Bahceli told the press that the proposed amendments "mean slandering Turkey's glorious history and despising the Turkish nation." MHP Deputy Group Chair Oktay Vural argued the amendments would "reward those who seek an opportunity to insult Turkey's national and spiritual values." Republican People's Party (CHP) deputy group chairman Suha Okay, insisting Article 301 should remain as is, noted that many EU countries maintain similar legal provisions. Democratic Society Party (DTP) Group Chair Ahmet Turk told the press that Parliament should abolish Article 301 entirely, a position also held by AKPers such as Vice Chair Dengir Mir Mehmet Firat.

ANKARA 00000059 002 OF 003

Journalists: Proposed Changes are Cosmetic

15. (C) Journalists prosecuted under Article 301 see AKP's proposed changes as cosmetic. "Turkish Daily News" columnist Burak Bekdil, sentenced to a fine and five years' probation for labeling the judiciary corrupt, told us changing "insulting Turkishness" to "degrading the Turkish nation" would still leave room for "wild interpretations and ad hoc prosecutions." Reducing the maximum penalty is meaningless because courts always reduce sentences to a fine and probation in 301 cases -- an effective mechanism that allows the government to stifle speech without imposing jail sentences. Allowing the justice minister to screen cases would revert to the unsatisfactory pre-Article 301 practice (under old TPC Article 159), Bekdil said. A "truly independent" review committee would be a positive, if unlikely, step.

16. (C) "Today's Zaman's" Lale Sariibrahimoglu, currently charged under 301 with "insulting" the military, predicted the proposed changes would not prevent rogue prosecutors from filing "ridiculous" cases. She cited the example of a December 2007 Article 301 prosecution opened against an Adiyaman public prosecutor who urinated in a judicial building's garden after over-imbibing. Sariibrahimoglu supports the "more appropriate" step of creating an independent review committee composed of members from different courts and ministries.

Questioning AKP's Sincerity

17. (C) Oya Aydin, an attorney for Article 301 defendants Professors Baskin Oran and Ibrahim Kaboglu, told us, in her view, AKP does not want universal free speech. PM Erdogan's numerous speech-related lawsuits against cartoonists who have lampooned him are evidence GOT leadership has not fully embraced the Western concept of free expression. Bekdil believes AKP officials want to freely express their own views

but oppose giving that same right to minority groups. Sariibrahimoglu maintained AKP could have already abolished Article 301, were its leaders truly interested in protecting free expression as an important element of democracy.

EU Welcomes Proposed Changes

18. (C) The European Commission's human rights officer Sema Kilicer told us the EC would welcome the proposed changes, though imperfect. She favors eliminating "Turkishness" but believes judges will be able to shape the new "Turkish nation" language to fit their own ideologies. She also worries that creating a screening body could result in dismissing cases involving international personalities like Orhan Pamuk, while allowing lower-profile cases to proceed. Despite concerns, Kilicer believes, "these imperfect changes would be a very positive symbolic step by AKP."

19. (C) Comment: The changes Iyimaya described are unlikely to prevent a nationalist (almost chauvinist) judiciary (reftel) from circumventing the new law's intent, but a carefully designed screening mechanism could provide the necessary check on rogue prosecutors. Endowing the justice minister with sole screening authority risks subjecting the process to political manipulation, while a more expansive committee would lend more transparency and fairness to the process. In the months since calls for changing or abolishing Article 301 began, PM Erdogan's government has retreated from taking action several times, despite intense international pressure; many Turks are unaware of or don't care about the issue. This does mark the first time a minister has announced publicly a draft law would be submitted within a week; up until now they were always "working on it" or "considering dealing with it in the context of constitutional change." The continuing divide between Erdogan's trusted advisors, let alone opposition party heat and public apathy, indicate just how controversial changing this law is for the GOT. End comment.

ANKARA 00000059 003 OF 003

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